



## CITY OF LODI COUNCIL COMMUNICATION

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**AGENDA TITLE:** Adopt Resolution of the Lodi City Council Establishing Rules for the Conduct of Its Meetings, Proceedings and Business, Thereby Rescinding Resolution 2004-282

**MEETING DATE:** February 15, 2006 City Council Meeting

**PREPARED BY:** Steve Schwabauer, City Attorney

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**RECOMMENDED ACTION:** That the City Council adopt Resolution Establishing Rules for the Conduct of City Council Meetings, Proceedings and Business, thereby Rescinding Resolution 2004-282.

**BACKGROUND INFORMATION:** This action only changes prior Resolution No. 2004-282 relating to Ex Parte Communications by adding proposed Subsection **K** addressing ex parte contacts in quasi-judicial hearings.

A City Council and its appointed commissions hear items before them in either a legislative or a quasi-judicial capacity. As detailed more fully below, Legislative actions implicate matters of broad application and quasi-judicial actions, apply existing law to a particular set of facts. When the City Council or Commission acts in an adjudicatory or quasi-judicial capacity, each Commissioner must (1) disclose on the record the nature and substance of any ex parte communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications.

Courts will invalidate quasi-judicial decisions when due process principles are violated. In one instance, a court determined that a city council failed to conduct a fair hearing on the grounds that the council did not include in the public record information obtained from individual contacts with the hearing petitioners (and their representatives) and from sources other than the public record. (*Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission* (1970) 11 Cal.App.3d 557; *Safeway Stores, Inc. v. City of Burlingame* (1959) 170 Cal.App.2d 637, 645-646; see also, *English v. City of Long Beach* (1950) 35 Cal.2d 155 (finding that no fair hearing occurred when a civil service board made an adjudicatory decision based on information obtained by board members outside of the hearing but not presented to the discharged employee or the employee's attorney).) In addition, courts conclude that a fair hearing does not occur when a quasi-judicial decision is based, in whole or in part, on evidence contained in an attorney's files but not entered into the record. (*La Prade v. Department of Water and Power of City of Los Angeles* (1945) 27 Cal.2d 47, 51-52.)

**b. What is a "Quasi-Judicial" decision?**

A "quasi-judicial" decision is one that requires a legislative body to apply existing law or policy to a given set of facts. The following are considered quasi-judicial decisions: tentative subdivision maps and parcel maps, variances, conditional use permits, and planned development permits, civil service grievance hearings, and CEQA certifications. Quasi-judicial decisions affect legally protected rights of individuals, which cannot be abridged without providing due process. Therefore, all information relied upon by the Council or Commission to make its decision must be disclosed on the public record, so that the applicant and the public may explain, question, refute or otherwise address the information. In Lodi the Parks and Recreation commission sits in a quasi-judicial capacity when it hears appeals on suspensions of athletes, the Planning Commission sits in a quasi-judicial capacity when it hears zoning change applications (indeed most planning commission activity is quasi-judicial).

APPROVED:

A handwritten signature in blue ink, appearing to read "Blair King".

Blair King, City Manager

c. **What is a Legislative Decision?**

A "legislative" decision, by comparison, establishes rules, policies, or standards of general applicability and are political in nature. They involve "the exercise of discretion governed by considerations of public welfare." Legislative actions tend to declare a public purpose. The following are legislative actions: adoption or amendment of a general plan or specific plan; zoning or rezoning; incorporation or annexation decisions; and adoption of rules, regulations or ordinances. As stated above, the Council and Commissions are not required to disclose contacts made off the record regarding a legislative decision. Nevertheless, where appropriate it is advisable for all council members to be apprised of the facts upon which an individual council member makes their decision.

A recent case highlights the importance of granting due process rights in quasi judicial matters. The case considered whether a member of a planning commission, who had authored an article opposing a development plan, had exhibited an unacceptable probability of bias warranting reversal of the commission's rejection of the plan. (Nasha L.L.C. v. City of Los Angeles (2004) 125 Cal.App.4<sup>th</sup> 470). In Nasha, a planning commissioner authored an article for the newsletter of his homeowners association criticizing the development project. At the hearing, he did not divulge his conduct, and he moved to reverse the Planning Director's decision (i.e. deny the project). His motion was carried by a three to one vote.

The court determined that procedural due process principals apply to quasi-judicial decision making. The court distinguished between actions that are legislative in character and actions that are adjudicatory. Quasi-legislative acts involve the adoption of rules of general application on the basis of broad public policy (generally, ordinances, specific plans etc.), while quasi-judicial acts involve the determination and application of facts peculiar to an individual case. (Subdivision maps, conditional use permits etc.) Quasi-judicial acts are subject to procedural due process requirements while those requirements apply to quasi-judicial acts regardless of the guise they may take. In Nasha, the court determined that since the matter involved the determination the application of facts peculiar to an individual case the matter was quasi-judicial. Therefore, procedural due process was applicable and the applicant was entitled to a reasonably impartial, noninvolved decision-maker. The court vacated the Planning Commission's decision and directed the Commission to conduct a new hearing before an impartial panel.

In order to insure the validity of the quasi judicial process and protect the due process rights of citizens, it is therefore recommended that the City Attorney review and identify all quasi judicial actions on the agenda and that when the Council and Commissions act in an adjudicatory or quasi-judicial capacity, each Council Member/Commissioner must (1) disclose on the record the nature and substance of any **ex parte** communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications as set forth in the attached revised Resolution.

Proposed new subsection K will read as follows:

K. The City Attorney shall review the City Council Agenda prior to its distribution to Council and note all Quasi Judicial items thereon. When the City Council or commission acts in an adjudicatory or quasi-judicial capacity, each Commissioner must (1) disclose on the record the nature and substance of any ex parte communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications.

  
Stephen Schwabauer  
City Attorney

RESOLUTION NO. 2006-31

A RESOLUTION OF THE LODI CITY COUNCIL ADOPTING  
AND ESTABLISHING RULES FOR THE CONDUCT OF ITS  
MEETINGS, PROCEEDINGS, AND BUSINESS AND  
THEREBY RESCINDING RESOLUTION 2004-282

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WHEREAS, the Lodi City Council, pursuant to Chapter 2.04 of the Lodi Municipal Code, is empowered and required to adopt by resolution, rules of conduct for City Council meetings; and

WHEREAS, it is desirable to make such procedural rules applicable to all other boards, commissions, and committees of the City.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows :

SECTION 1. RULES OF CONDUCT AND DEBATE FOR THE CITY COUNCIL,  
BOARDS, COMMISSIONS, AND COMMITTEES

A. Presiding Officer May Debate.

The Mayor or presiding officer may move, second, and debate from the chair, subject only to such limitations of debate as are by these rules established. The chair shall not be deprived of any of the rights and privileges of a Council or board member by reason of being the presiding officer.

B. Obtain the Floor.

Any member of the Council or board wishing to speak must first obtain the floor by being recognized by the chair. The chair must recognize any member who seeks the floor when appropriately entitled to do so.

C. Motions.

The chair or any member of the Council or board may bring any matter of business appearing on the agenda before the body by making a motion. The chair shall open the matter for debate, offering the first opportunity to debate to the moving party and, thereafter, to any other member properly recognized by the chair. Once the matter has been fully debated and seconded and the chair calls for a vote, no further debate will be allowed; provided, however, Council or board members may be allowed to explain their vote. The person making the motion shall have the privilege of closing debate.

D. Voting.

All members present at a meeting shall vote when the question is called, subject to the provisions of Lodi Municipal Code Section 2.04.140.

E. Procedural Rules of Order.

Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion. These motions take precedence over the main motion and, if properly made and seconded, must be disposed of before the main motion can be acted upon. The following motions are appropriate and may be made by the chair or any Council or board member at any appropriate time during the discussion of the main motion. They are listed in order of precedence. The first three subsidiary motions are non-debatable; the last four are debatable.

SUBSIDIARY MOTIONS:

1. Lay on the Table. Any member may move to lay the matter under discussion on the table. The motion temporarily suspends any further discussion or the pending motion without setting a time certain to resume debate. It must be moved and seconded and passed by a majority vote. To bring the matter back before the body, a member must move that the matter be taken from the table, seconded, and passed by a majority. A motion to take from the table must be made at the same meeting at which it was placed on the table or at the next regular meeting of the body; otherwise, the motion that was tabled dies, although, it can be raised later as a new motion.
2. Move Previous Question. Any member may move to immediately bring the question being debated to a vote, suspending any further debate. The motion must be made and seconded without interrupting one who already has the floor. A two-thirds vote is required for passage.
3. Limit or Extend Limits of Debate. Any member may move to put limits on or extend the length of debate. The motion must be made and seconded and requires a two-thirds vote to pass.
4. Postpone to a Time Certain. Any member may move to postpone the pending motion to a time certain. This motion continues the pending main motion to a future date as determined by the Council or board at the time the motion is passed. The motion must be seconded and requires a majority vote for passage.
5. Commit or Refer. Any member may move that the matter being discussed should be referred to a committee, commission, or staff for further study. The motion must be seconded and requires a majority vote for passage. The motion may contain directions for the committee or commission, as well as a date upon which the matter will be returned to the Council or board's agenda. If no date is set for returning the item to the Council or board's agenda, any member may move, at any time, to require the item be returned to the agenda. The motion must be seconded and a majority vote is required for passage if the item is to come back at a future date certain, or a two-thirds vote if the item is to be immediately discussed by the Council or board at the time the motion to return is made.

6. Amend. Any member may amend the main motion or any amendment made to the main motion. Before the main motion may be acted upon, all amendments and amendments to amendments must first be acted upon. A motion to amend must be seconded and requires a majority vote for passage. An amendment must be related to the main motion or amendment to which it is directed. Any amendment which substitutes a new motion rather than amending the existing motion is out of order and may be **so** declared by the chair.
7. Postpone Indefinitely. Any member may move to postpone indefinitely the motion on the floor, thus avoiding a direct vote on the pending motion and suspending any further action on the matter. The motion must be seconded and requires a majority vote for passage.

**F. Motions of Privilege, Order, and Convenience.**

The following actions by the Council or board are to insure orderly conduct of meetings and for the convenience of the members. These motions take precedence over any pending main or subsidiary motion and may or may not be debated as noted.

1. Call for Orders of the Day. Any member may demand that the agenda be followed in the order stated therein. No second is required and the chair must comply unless the Council or board, by majority vote, sets aside the orders of the day.
2. Question of Privilege. Any member, at any time during the meeting, may make a request of the chair to accommodate the needs of the body or his/her personal needs for such things as reducing noise, adjusting air conditioning, ventilation, lighting, etc. Admissibility of question is ruled on by the chair.
3. Recess. Any member may move for a recess. The motion must be seconded and a majority vote is required for passage. The motion is debatable.
4. Adjourn. Any member may move to adjourn at any time, even if there is business pending. The motion must be seconded and a majority vote **is** required for passage. The motion is not debatable.
5. Point of Order. Any member may require the chair to enforce the rules of the Council or board by raising a point of order. The point of order shall be ruled upon by the chair.
6. Appeal. Should any member be dissatisfied with a ruling from the chair, he/she may move to appeal the ruling to the full Council or board. The motion must be seconded to put it before the Council or board. A majority vote in the negative or a tie vote sustains the ruling of the chair. The motion is debatable and the chair may participate in the debate.

7. Suspend the Rules. Any member may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. The motion requires a second and a two-thirds vote is required for passage.
8. Division of Question. Any member may move to divide the subject matter of a motion which is made up of several parts in order to vote separately on each part. The motion requires a second and a majority vote for passage. This motion may also be applied to complex ordinances or resolutions.
9. Reconsider. Except for votes regarding matters which are quasi-judicial in nature or matters which require a noticed public hearing, the Council or board may reconsider any vote taken at the same session, but no later than the same or next regular meeting, to correct inadvertent or precipitant errors, or consider new information not available at the time of the vote. The motion to reconsider must be made by a member who voted on the prevailing side, must be seconded, and requires a majority vote for passage, regardless of the vote required to adopt the motion being reconsidered. If the motion to reconsider is successful, the matter to be reconsidered takes no special precedence over other pending matters and any special voting requirements related thereto still apply. Except pursuant to a motion to reconsider, once a matter has been determined and voted upon, the same matter cannot be brought up again at the same meeting.
10. Rescind, Repeal, or Annul. The Council or board may rescind, repeal, or annul any prior action taken with reference to any legislative matter so long as the action to rescind, repeal, or annul complies with all the rules applicable to the initial adoption, including any special voting or notice requirements or unless otherwise specified by law.

G. Authority of the Chair.

Subject to appeal, the chair shall be the chief parliamentarian, rule on points of order, and shall have the authority to prevent the misuse of the legitimate form of motions, or the abuse of privilege of renewing certain motions, to obstruct the business of the Council or board by ruling such motions out of order. In so ruling, the chair shall be courteous and fair and should presume that the moving party is making the motion in good faith.

H. Public Hearings.

Matters which are required to be heard at a noticed public hearing shall be conducted in the following manner.

1. Time for Consideration. Matters noticed to be heard by the Council or board shall commence at the time specified in the notice of hearing, or as soon thereafter as is reasonably possible, and shall continue until the same has been completed or until other disposition of the matter has been made.

2. Continuance of Hearings. Any hearing being held or noticed or ordered to be held by the Council or board at any meeting may, by order or notice of continuance, be continued or re-continued to any subsequent meeting in the manner provided herein for adjourned meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or notice of continuance was adopted or made.
3. Public Discussion at Hearings. When a matter for public hearing comes before the body, the chair shall open the public hearing. Upon opening the public hearing and before any motion is adopted related to the merits of the issue to be heard, the chair shall inquire if there are any persons present who desire to speak on the matter which is to be heard or to present evidence respecting the matter. Any person desiring to speak or present evidence shall make his/her presence known to the chair and upon being recognized by the chair, the person may speak or present evidence relevant to the matter being heard. No person may speak without first being recognized by the chair. Members who wish to ask questions of the speakers or each other during the public hearing portion, may do so but only after first being recognized by the chair. The chair shall conduct the meeting in such a manner as to afford due process. Time limits may be established by the chair, limiting the duration of presentations as set forth in these rules.

All persons interested in the matter being heard shall be entitled to submit written evidence or remarks, as well as other graphic evidence. All such evidence presented shall be retained by the City Clerk or secretary of the board as part of the record. No person shall be permitted during the hearing to speak about matters or present evidence which are not germane to the matter being considered. A determination of relevance shall be made by the chair, but may be appealed as set forth in these rules.

4. Consideration of Question by Council or Board. After all members of the public desiring to speak upon the subject of the hearing have been given an opportunity to do so, the public hearing shall be closed by the chair, and the body may consider what disposition they wish to make of the question or questions presented at the hearing. No member of the public shall be **allowed**, without consent of the chair, to speak further on the question during this period of deliberation; although, the members may ask questions of the speakers if so desired. At the conclusion of discussion and appropriate motion having been made and seconded, the body shall vote on the matter.
- I. New Business: Introduction.

During Council meetings, no new business on the agenda (except closed sessions) shall be considered after 11:00 p.m. without two-thirds vote of the Council. Any new business remaining on the agenda shall be carried over to the next regular Council meeting.

**J. Quorum: Majority; Two-Thirds Vote: Determination.**

As used in this resolution or in the application of Lodi Municipal Code Chapter 2.04, the following definitions shall apply:

1. "Quorum" shall mean a simple majority of the total number of all persons on such body.
2. "Majority" shall mean the majority of members actually present at a meeting.
3. "Two-thirds vote" shall mean two-thirds vote of the members actually present, rounded up or to the next number if less than a whole person. Two-thirds of four members shall be three members; two-thirds of five members shall be four members; etc.

**K. The City Attorney shall review the City Council Agenda prior to its distribution to Council and note all Quasi Judicial items thereon. When the City Council or commission acts in an adjudicatory or quasi-judicial capacity, each member must (1) disclose on the record the nature and substance of any ex parte communications relating to the matter; and (2) provide interested parties full and fair opportunity to rebut or explain the information obtained from those communications.**

**SECTION 2.** This Resolution shall become effective immediately.

Dated: February 15, 2006

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I hereby certify that Resolution No. 2006-31 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 15, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,  
and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
SUSAN J. BLACKSTON  
City Clerk

2006-31